

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-298V

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MARIA KABAYAN, * Chief Special Master Corcoran

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Petitioner, * Dated: June 14, 2023

*

v. *

*

SECRETARY OF HEALTH AND *
HUMAN SERVICES *

*

Respondent. *

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Jessi C. Huff, Maglio Christopher & Toale, Seattle, WA, for Petitioner.

Bridget Corridon, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION DISMISSING PETITION¹

On March 15, 2022, Maria Kabayan filed a petition seeking compensation under the National Vaccine Injury Compensation Program (the “Vaccine Program”).² ECF No. 1. Petitioner alleged that she suffered from Pemphigus Vulgaris as a result of receiving the human papillomavirus vaccine on May 20, 2019. *Id.* On November 22, 2022, Respondent filed his Rule 4(c) Report recommending that compensation was not appropriate in this matter. *See Report*, dated Nov. 22, 2022 (ECF No. 16).

Petitioner had been provided a deadline for submission of an expert report, but has now filed a motion for a decision dismissing the claim. *See Motion*, dated June 12, 2023 (ECF No. 23) (“Mot.”). Petitioner maintains that after an investigation of the facts and science supporting her

¹ The parties may object to the published Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the entire Decision will be available to the public in its current form. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. §§ 300aa-10–34 (2012)) (hereinafter “Vaccine Act” or “the Act”). All subsequent references to sections of the Vaccine Act shall be to the pertinent subparagraph of 42 U.S.C. § 300aa.

case, she has determined that she would be unable to prove that she is entitled to compensation in the Vaccine Program, and that to proceed further would be unreasonable and would waste the resources of the Court, Respondent, and the Vaccine Program. Mot. at 1. Petitioner also acknowledges that she understands a decision dismissing her petition will result in a judgment against her, and that such a judgment will end all her rights in the Vaccine Program. *Id.* And she has expressed a desire to exercise her rights to file a civil action in the future pursuant to 42 U.S.C. § 300aa-21(a)(2). *Id.* at 2.

ANALYSIS

The provisions under the Vaccine Rules for ending a case before a decision has been issued are largely inapplicable herein. Petitioner may no longer avail herself of Vaccine Rule 21(a)(1)(A), which governs voluntary dismissals before service of the Rule 4(c) Report, and Respondent has not stipulated to dismissal under Rule 21(a)(1)(B). In addition, even if the parties had so stipulated, Petitioner seeks entry of a judgment, whereas Vaccine Rule 21(a) would only result in an “order concluding proceedings.” Rule 21(a)(3).

Accordingly, the only remaining channel for the relief Petitioner requests is a “motion seeking dismissal”—a mechanism for ending cases that other claimants have used, either because the claim appears unlikely to succeed, or simply because the petitioner prefers not to continue with the claim, but seeks to terminate the action after the time to act under Rule 21 has passed. *See, e.g., Goldie v. Sec'y of Health & Hum. Servs.*, No. 18-1476V, 2019 WL 6045647, at *1 (Fed. Cl. Spec. Mstr. Oct. 11, 2019). Dismissal of Vaccine Program cases at this particular stage of the litigation is not uncommon. Indeed, the rules of the Court of Federal Claims (which are properly applied herein) permit dismissal of claims at a petitioner’s/plaintiff’s request and “on terms that the court considers proper.” RCFC 41(a)(2).

To be entitled to compensation under the Vaccine Act, a petitioner must demonstrate that he or she 1) suffered a “Table Injury”—i.e., an injury falling within the Vaccine Injury Table—corresponding to her vaccination, or 2) that she suffered an injury that was actually caused by a vaccine. *See* § 13(a)(1)(A) and 11(c)(1). But Petitioner has affirmatively represented she cannot meet the relevant evidentiary standards, and has not offered an expert report to support her claim (a step I deemed critical to substantiating entitlement in this case).

Accordingly, I hereby **DISMISS** Petitioner’s case. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of this Decision.³

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Chief Special Master